

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

ULIS GAINES and
U. Gaines Electric
Company, Inc.,

Respondents

HUDALJ 91-1632-DB

Decided: June 7, 1991

Jeffrey A. Mitchell
For the Respondent

Andrea Bernardo
For the Government

Before: Robert A. Andretta
Administrative Law Judge

INITIAL DETERMINATION

Jurisdiction and Procedure

This proceeding arose as a result of a proposal by the Department of Housing and Urban Development ("the Department" or "HUD") dated January 2, 1991, to debar Ulis Gaines ("Respondent") and U. Gaines Electric Company, Inc., from further participation in primary covered transactions and lower-tier covered transactions as either participants or principals at HUD and throughout the executive branch of the federal government and from participating in procurement contracts with HUD for a period of three years from July 18, 1990, the date of Respondent's notice. Respondents were also advised that they were immediately suspended pending the outcome of these proceedings. The Department's action is based upon Respondent Gaines's plea of guilty and

subsequent conviction in the United States District Court for the Eastern District of Louisiana for violation of Title 18, Section 371, of the United States Code.

Respondent requested a hearing on the proposed debarment by letter dated January 15, 1991. On February 5, 1991, I issued a Notice and Order of this proceeding, and on March 6, 1991, the Department timely filed The Government's Brief in Support of Debarment. On April 4, 1991, Respondent requested and was granted an extension of one week to file his reply brief. Respondent filed his reply brief on April 12, 1991. Thus this case became ripe for decision on that date. Because the proposed action is based on a conviction, the hearing in this matter is limited under 24 CFR 24.313(b)(2)(ii) to the submission of documentary evidence and written briefs.

Findings of Fact

Respondent Gaines performed his business transactions through his affiliate U. Gaines Electric Company, Inc., and received grant funds from HUD for emergency electrical repair contracts for the Housing Authority of New Orleans ("HANO"). The Department's action is based upon allegations regarding Respondent's actions between April, 1988 and January, 1989.

On July 11, 1990, the U. S. District Court for the Eastern District of Louisiana returned a one-count indictment charging Respondent with conspiracy to bribe an official of HANO. HANO is a recipient of HUD funds. Respondent was placed on probation for three years. Respondent was also required to submit to random drug testing, provide his probation officer with complete disclosure of his personal and business finances, and pay a fine of \$500 at the rate of \$50 per month. (S1, 2)¹

According to the Government's Brief In Support of Debarment, Respondent Gaines participated in an arrangement with Bernel Sanders, the Deputy Executive of HANO, whereby Mr. Sanders would steer electrical contracts to Respondent's affiliate, U. Gaines Electric Company, Inc. Respondent Gaines was to charge an additional ten percent on his invoices to HANO and pay that ten percent to Mr. Sanders and another individual. (S3).

Applicable Law

Respondent Ullis Gaines is a "participant" and a "principal" as defined by 24

¹The Secretary's exhibits are represented by S and a number.

CFR 24.105(m) and (p), respectively. As an individual seeking repair contracts from a Housing Authority, which receives grant funds from HUD, Respondent has participated in "covered transactions." As a person with critical influence on or substantive control over U. Gaines Electric Company, Inc., the two are affiliates (24 CFR 24.105(b)), and are subject to HUD's suspension and debarment regulations in accordance with 24 CFR 24.105(b). To protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. 24 CFR 24.115(a). HUD is authorized to exclude or disqualify any participants, principals and affiliates who have demonstrated a lack of responsibility from participating in Department programs. *See In the Matter of Hector J. Garcia*, HUD ALJ 90-1531-DB (decided April 10, 1990).

The basis for the proposed debarment of Respondent is his conviction for conspiracy to bribe a government official. The Department relies upon the causes for debarment stated in 24 CFR 24.305. Specifically, Section 24.305 provides that debarment may be imposed for:

(a) Conviction of or civil judgement for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement transaction;

* * * * *

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

Discussion

Respondent Gaines has admitted that he bribed an official of HANO. He argues in his Brief in Opposition to Debarment that HANO provided no information to him, either orally or in writing, on the proper billing rates and

allowable cost and that due to his inexperience in dealing with HANO and his strong desire to obtain HANO work, he set his rates at an extremely low premium. He asserts that in March 1988, his friend, Mr. Sanders, approached him concerning the volume of work he was performing for HANO. When Respondent informed Mr. Sanders that he had obtained only limited work, Mr. Sanders boasted that he knew the individual responsible for assigning HANO's work and would put in a "good word" for Respondent.

In the "Factual Background" to Respondent's Brief, he admits to participating in the bribery scheme only after he was solicited by an official at HANO and that the amount of the kickbacks were from his own profit margin, rather than from padded invoices. Respondent contends that he believed that unless he complied with the demand he would lose any chance for future HANO work; that rather than reporting the incident and angering the HANO official by spawning an investigation which would probably uncover nothing, he decided to pay the demanded sums out of his own newly- established profit margin and truck expense. He argues that the passage of time since the conduct for which he was convicted should mitigate the period of debarment. He states that he did not "pad" invoices or submit invoices for work not performed. He also asserts that he absolutely made no attempts at soliciting HANO work through the payment of "kickbacks," nor did he concoct the bribery scheme.

The Government argues in its Reply Brief that the conduct for which Respondent was convicted cannot be overlooked because Respondent made the conscious decision to enter into this bribery scheme knowing that it was fraudulent. Bribery of a Housing Authority official is a very serious offense, regardless of the amount of funds involved. The charges for which Respondent was convicted are serious and show a lack of business honesty and integrity. HUD is dependent on the honesty and integrity of individuals working for and dealing with the state and local governmental housing authorities that receive HUD funds. In its Brief, the Government asserts that "[w]ithout the assurance that those who deal with a housing authority are honest and upright in their dealings, HUD has no assurance that its funds are being properly spent."

While Respondent has suggested that the Government is without further evidence of more recent acts indicating his lack of business responsibility, he has not demonstrated that he is no longer a risk to the Government. "The test of responsibility does not hinge on the passage of time, but rather whether there are indications of a respondent's integrity and honesty such that the government will not face a risk if it does business with respondent in the future." *In the Matter of John H. Sikking*, HUD ALJ 91-1616-DB (decided April 25, 1991).

The Government seeks to impose a debarment period of three years based on Respondent's conviction. Conviction of bribery or any other offense indicates a lack of business integrity or honesty which seriously affects the question of business responsibility. Under the regulations as described above, the Department may debar a participant or principal, and any affiliates, on the basis of a conviction alone; there is no need for further proof of the Department's allegations. Debarment is a sanction which may be invoked by HUD as a measure for protecting the public interest by ensuring that only those qualified as "responsible" are allowed to conduct business with the federal government. 24 CFR 24.115(a). See *Stanko Packing Co. v. Bergland*, 489 F. Supp. 947, 949 (D.D.C. 1980); *Roemer v. Hoffman*, 419 F. Supp. 130, 131 (D.D.C. 1976). "Responsibility" is a term which encompasses business integrity and honesty. 24 CFR 24.305. See *Gonzalez v. Freeman*, 334 F.2d 570, 573 & n.4, 576-77 (D.C. Cir. 1964).

The debarment process is not intended as a punishment; rather, it protects governmental interests not safeguarded by other means. See *Joseph Constr. Co. v. Veterans Admin.*, 595 F. Supp. 448, 452 (N.D. Ill. 1984). Thus, debarment of participants like Respondent serves the purpose of exclusion of irresponsible parties from HUD programs and deterrence of other parties from committing such acts. The Government must be able to protect its programs by precluding from participation individuals who engage in fraudulent schemes where Government funds are involved. Without the ability to debar both individuals who solicit bribes and those who make bribes, the Government cannot be assured that its programs are properly administered.

Respondent's reasons for participation in a bribery scheme do not justify his behavior. His conduct demonstrates that he cannot be expected to act with candor in the future.

Conclusion and Order

Upon consideration of the need to protect the public interest, I conclude and determine that good cause exists to debar Respondent Ullis Gaines and his affiliate U. Gaines Electric Company, Inc., from further participation in primary covered transactions and lower tier covered transactions as either participants or principals at HUD and throughout the executive branch of the federal government and from participating in procurement contracts with HUD for a period of three years from July 18, 1990.

SO ORDERED

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Robert A. Andretta
Administrative Law Judge

Dated: June 7, 1991